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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARIA ALONSO and MARIA
RODRIGUEZ.

Plaintiffs.

No.

vs.

ANDALUZ NIGHT CLUB CORP., a Washington Corporation, and BLANCA FLOR CUEVAS and JOSE GUADALUPE CUEVAS, individually and as a marital community,

Defendants.

COMPLAINT FOR DAMAGES – WAGE CLAIM

COMPLAINT FOR DAMAGES - 1 -

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I. INTRODUCTION

1. Plaintiffs are former employees of the Andaluz Night Club Corp., which operates a restaurant, bar and night club, in Quincy, Washington. They seek compensation for failure to pay overtime wages and failure to provide paid rest and meal periods during 2006, 2007, and 2008.

2. Plaintiffs bring this action for damages for violations of their rights under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.*, and Washington State wage and hour laws.

II. JURISDICTION AND VENUE

3. The Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 216(b) over Plaintiffs' Fair Labor Standards Act, 29 U.S.C. §§ 201-219 ("FLSA"), claims.

4. The Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1337(a) over Plaintiffs' state law claims because, as described below, these state law claims form part of the same case or controversy under Article III of the United States Constitution.

5. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and (c).

III. PARTIES

1 6. Plaintiff Maria Alonso was an adult resident of Grant County,
2 Washington.
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4 7. Plaintiff Maria Alonso was an employee of the Defendants within the
5 meaning of 29 U.S.C. § 203(e) of the FLSA.
6

7 8. Plaintiff Maria Rodriguez is an adult resident of Grant County,
8 Washington.
9

10 9. Plaintiff Maria Rodriguez was an employee of the Defendants within
11 the meaning of 29 U.S.C. § 203(e) of the FLSA.
12

13 10. Defendant Andaluz Night Club, Inc., was incorporated as a
14 Washington corporation on January 8, 2007.
15

16 11. Defendant Andaluz Night Club, Inc., operates the Andaluz restaurant,
17 bar, and night club in Quincy, Grant County, Washington.
18

19 12. Defendants Blanca Flor Cuevas and Defendant Jose Guadalupe
20 Cuevas were husband and wife.
21

22 13. Defendant Jose Guadalupe Cuevas died on or about December 22,
23 2007.
24

14. Prior to incorporation, the Andaluz restaurant, bar, and night club was owned by Defendants Blanca Flor Cuevas and Jose Guadalupe Cuevas as a sole proprietorship.

15. Prior to incorporation, Defendants Blanca Flor Cuevas and Jose Guadalupe Cuevas owned, operated, and managed the Andaluz restaurant, bar, and night club. and acted directly on the businesses' interest and had control with regard to the wage and hour practices at issue in this lawsuit and were therefore Plaintiffs' employers for purposes of Plaintiffs' federal and state claims.

16. After incorporation, Defendants Blanca Flor Cuevas and until his death Jose Guadalupe Cuevas owned, operated, and managed the Andaluz Night Club, Inc., and acted directly on the businesses' interest, and had control with regard to the wage and hour practices at issue in this lawsuit and were therefore Plaintiffs' employers for purposes of Plaintiffs' federal and state claims.

17. At all relevant times, Defendants Blanca Flor Cuevas, Jose Guadalupe Cuevas, and Andaluz Night Club, Inc., was an enterprise engaged in commerce or in the production of goods for commerce as defined by 29 U.S.C. § 203(s)

IV. FACTS

1 18. Plaintiff Maria Alonso worked as an employee of the Andaluz
2 restaurant, bar, and night club during 2006, 2007, and through November 2008.
3

4 19. During the day, Plaintiff Maria Alonso worked as a cook preparing
5 food and setting up plates for service, and other tasks.
6

7 20. During the night, Plaintiff Maria Alonso worked as a cook / waitress
8 for a common buffet by cooking food and chopping vegetables, setting food out in
9 warming trays, maintaining and cleaning the buffet area, and performing other
10 tasks.
11

12 21. Plaintiff Maria Rodriguez worked as an employee of the Andaluz
13 restaurant, bar, and night club during 2007 and through November, 2008.
14

15 22. During the day, Plaintiff Maria Rodriguez worked as a waitress
16 serving food to customers and other tasks.
17

18 23. During the night, Plaintiff Maria Rodriguez worked as a bartender
19 serving alcohol to customers and other tasks.
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21 24. Defendants paid Plaintiff Maria Alonso bi-monthly by paycheck for
22 88 or 96 hours of work for each pay period.
23

24 25. Defendants paid Plaintiff Maria Rodriguez bi-monthly by paycheck
25 for 96 hour of work for each pay period.
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1 26. Plaintiffs normally worked more than 88 or 96 hours per pay period.

2 27. For hours worked in excess of 88 or 96 hours per pay period,

3 Defendants paid Plaintiffs in cash not accounted for on Plaintiffs' paychecks.

4 28. Plaintiffs normally worked more than forty hours per week.

5 29. For all hours the Plaintiffs worked in excess of forty hours per week,

6 Defendants paid Plaintiffs the regular hourly rate of pay and not one and one-half

7 times the regular rate at which they were employed.

8 30. Throughout the employment of Plaintiff Maria Alonso, Defendants

9 did not allow or compensate Plaintiff Maria Alonso for rest periods.

10 31. Throughout the employment of Plaintiff Maria Rodriguez, Defendants

11 did not allow or compensate Plaintiff Maria Rodriguez for rest periods.

12 32. Throughout the employment of Plaintiff Maria Alonso, Defendants

13 did not compensate Plaintiff Maria Alonso for meal periods during which she was

14 not allowed relief from work.

15 33. Throughout the employment of Plaintiff Maria Rodriguez, Defendants

16 did not compensate Plaintiff Maria Rodriguez for meal periods during which she

17 was not allowed relief from work.

1 34. Defendants knew that Plaintiffs were entitled to overtime
2 compensation or showed reckless disregard as to whether the Plaintiffs were
3 entitled to overtime compensation.
4

5 35. As a result of the failure of Defendants to pay overtime and rest
6 period wages, Plaintiff Maria Alonso and Plaintiff Maria Rodriguez have suffered
7 economic damages.
8

9 **V. CAUSES OF ACTION**

10 **FIRST CLAIM – FAIR LABOR STANDARDS ACT** 11 **OVERTIME VIOLATION**

12 33. Plaintiffs were employed by Defendants in commerce, production of
13 goods for commerce and in an enterprise engaged in commerce where goods were
14 handled in commerce within the meaning of 29 U.S.C.A. §§ 203(b), 206(a), and
15 207(a).

16 34. Defendants Blanca Flor Cuevas and Jose Guadalupe Cuevas were
17 Plaintiffs' employers within the meaning of 29 U.S.C. § 203(d), and are liable for
18 the FLSA violations alleged herein.

19 35. Defendants failed to pay Plaintiffs overtime pay for work in excess of
20 forty hours per week in violation of 29 U.S.C. § 207(a), giving rise to a cause of
21
22

1 action under 29 U.S.C. § 216(b).

2 36. As a consequence of the Defendants' violations of 29 U.S.C. § 207(a),
3 the Plaintiffs are entitled to recover their unpaid overtime wages, plus an additional
4 equal amount in liquidated damages, pursuant to 29 U.S.C. § 216(b).

5 **SECOND CLAIM – MINIMUM WAGE ACT VIOLATION**

6 37. Plaintiffs were Defendants' employees under RCW chapter 49.46.

7 38. Defendants violated RCW 49.46.130 by failing to pay overtime to
8 Plaintiffs for work in excess of forty hours per week.

9 39. Defendants' violations of RCW chapter 49.46 were willful and made
10 with the intent to deprive plaintiffs of wages and thus give rise to exemplary
11 damages under RCW 49.52.050 and RCW 49.52.070.

12 **THIRD CLAIM – REST / MEAL PERIOD VIOLATION**

13 40. Defendants violated WAC 296-126-092 and RCW 49.12 by not
14 allowing or compensating Plaintiffs for rest periods after three hours of working
15 time and each 4 hours worked.

16 41. Defendants violated WAC 296-126-092 and RCW 49.12 by not by
17 not providing paid meal periods of at least 30 minutes as required by regulation
18 and statute.

42. Plaintiffs are entitled to damages for failure to provide paid rest and/or meal periods.

43. Defendants' violations of RCW chapter 49.12 were willful and made with the intent to deprive plaintiffs of wages and thus give rise to exemplary damages under RCW 49.52.050 and RCW 49.52.070.

VI. PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

- a. Award economic damages to the Plaintiffs for overtime hours in excess of forty hours per week worked, and for uncompensated rest periods, plus prejudgment interest;
- b. Award an additional equal amount as liquidated damages under FLSA, 29 U.S.C. § 216(b)), or prejudgment interest, whichever is greater,
- c. Award exemplary damages under the Minimum Wage Act, RCW 46.52.070 for a willful violation of a wage statute;
- d. Award reasonable attorney fees, expenses, and costs pursuant to 29 U.S.C. § 216(b) and RCW 49.46.090, RCW 46.48.030, RCW 49.52.050, and RCW 49.52.070; and
- e. Award such other and further relief as this Court deems just and proper.

1 SIGNED this 27th day of April, 2009.
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5 s/ D. Ty Duhamel
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LAW OFFICE OF DAVID N. MARK

10 s/ David N. Mark /by dtd
11 David N. Mark, WSBA #13908
12 Attorneys for Plaintiffs
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CERTIFICATE OF SERVICE

I hereby certify that on April 28, 2009 I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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s/ D. Ty Duhamel
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COMPLAINT FOR DAMAGES - 11 -

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